

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

GEORGE SCHAEFER,

Complainant,

and

**RICHARD WOLF MEDICAL
INSTRUMENTS CORP.,**

Respondent.

Charge No. 2007CN2569

EEOC No. 440-2006-08561

ALS No. 08-095

Judge Reva S. Bauch

RECOMMENDED ORDER AND DECISION

On or around March 3, 2008, Complainant filed his Complaint with the Commission. That Complaint alleged that Respondent discriminated against him based on age when it terminated him. On April 16, 2008, I granted a Motion to stay this matter pending the outcome of the federal lawsuit based on the same allegations as Complainant made in his Charge and Complaint. On March 31, 2009, the federal District Court granted Respondent's Motion for Summary Judgment and dismissed the federal court action. Complainant did not file an appeal to the U.S. Court of Appeals for the Seventh Circuit.

This matter now comes to be heard on Respondent's Motion to Lift Stay and to Dismiss Action with Prejudice ("Motion"). Complainant filed a response to the Motion on September 16, 2009. Respondent filed a reply on September 17, 2009. This matter is now ready for a decision.

The Illinois Department of Human Rights ("Department") is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

Findings of Fact

The following findings of fact were derived from the record file in this case.

1. On or around March 3, 2008, Complainant filed his Complaint with the Commission.
2. That Complaint alleged that Respondent discriminated against him based on age when it terminated him.
3. On April 16, 2008, I granted a Motion to stay this matter pending the outcome of the federal lawsuit based on the same allegations as Complainant made in his Charge and Complaint.
4. On March 31, 2009, Judge Joan Lefkow of the U.S. District Court granted Respondent's Motion for Summary Judgment and dismissed the federal court action.
5. Judge Lefkow's decision was not appealed and the time for appeal has expired.
6. The parties in this case are identical to the parties in the federal action.
7. The allegations before the Commission are the same as the allegations that were before the federal court, relying on the same underlying Charge No. 2007 CN 2569.
8. On August 13, 2009, Respondent filed its Motion to Lift Stay and to Dismiss Action with Prejudice.
9. Complainant filed a response to the Motion on September 16, 2009.
10. Respondent filed a reply on September 17, 2009.

Conclusions of Law

1. For purposes of applying the doctrine of *res judicata*, a summary judgment is a decision on the merits.
2. This case should be dismissed on the basis of *res judicata*.

Discussion

On April 16, 2008, pursuant to Respondent's Motion, this matter was stayed pending a ruling in the federal court. On March 31, 2009, Judge Joan Lefkow of the U.S.

District Court granted summary judgment in favor of Respondent. Judge Lefkow's decision was not appealed and the time for taking an appeal has expired.

Respondent now moves for dismissal of this case, arguing that Complainant's claim is barred under the doctrine of *res judicata*. Complainant, in his response, fails to address the doctrine of *res judicata* or Respondent's contention that *res judicata* requires dismissal of this case. In his response, Complainant admits that he failed to timely appeal Judge Lefkow's decision. His response then explains why he disagrees with Judge Lefkow's Memorandum Opinion and Order granting Respondent's Motion for Summary Judgment.

The Commission has long recognized and applied the doctrine of *res judicata*. **Sharpe and Village of Fox Lake/Police Department, IHRC, ALS No. 12298, March 26, 2007.** The doctrine of *res judicata* applies if three elements are met: (1) the parties in the present action must be the same parties, or in privity with the same parties, as the ones in the prior action, (2) the cause of action must be the same one as in the prior action, and (3) a decision on the merits must have been entered in the prior action. **Housing Authority for LaSalle County v. Young Men's Christian Association of Ottawa, 101 Ill. 2d 246, 461 N.E.2d 959 (1984).** Those elements have been met in this case.

The parties and issues in this case are identical to those before the federal court. Moreover, for purposes of applying the doctrine of *res judicata*, a summary judgment is a decision on the merits. **Aguilera and Village of Hazel Crest Police Department, IHRC, ALS No. 11025, April 28, 2003.** The federal court's summary judgment has not been appealed, and the time for appeal has expired. As such, it is clear that the doctrine of *res judicata* applies and there is no alternative to dismissal of this case.

Recommendation

Based on the foregoing, this case is barred under the doctrine of *res judicata*. Accordingly, I recommend that the Complaint in this matter be dismissed, with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
REVA S. BAUCH
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW DIVISION

ENTERED: October 7, 2009